IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 31 OF 2004

Roop Kishore Dargar,
Adult, Indian inhabitant of Mumbai,
residing at 4/38, Sector VI, ... Petitioner
Vashi, New Mumbai (Ori.Accused No.1)

Versus

1. The State,
2. C.B.I., A.C.B.,
Tanna House, Mumbai. ... Respondents

.....

Mr.Harish Jagtiani with Mr. Mohan Bir Singh,
for the Petitioner.

Mr.A.S. Gadkari, A.P.P., for Respondent No.1.

Mr.J.C. Satpute, for Respondent No.2.

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CORAM : A.M.KHANWILKAR, J.

JUNE 21, 2005.

JUDGMENT :

1. This Writ Petition takes exception to the order passed by the Special Judge for C.B.I., Greater Mumbai, dated November 21, 2003 in Miscellaneous Application No. 267 of 2000 in Special Case No. 56 of 1998 (R.C. No.24/A/94),

thereby rejecting the discharge application preferred by the Petitioner, who has been named as Accused No.1 in the abovenumbered case.

2. The Petitioner, along with seven others, has been named as accused in the criminal case registered as Charge Sheet R.C.No.24/A/ACB/Mumbai for offence punishable under sections 120B, 420 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The Petitioner at the relevant time was working as the Chief Marketing Manager of Rashtriya Chemicals and Fertilizers Limited at Mumbai. The prosecution case as spelt out from the charge sheet filed by the investigating agency is as follows.

> " That Shri R. Venkatesan the then Chairman & Managing Director, Rashtriya Chemical Fertilizers Ltd. Chembur, Mumbai, while functioning as such during 1987-1991 abused his official position in as much as he is in conspiracy with S/Shri Surendra Mohan Dingra, Dy. General Manager, RCF, Chembur, Mumbai, Roop Kishore Dargar, Chief Marketing Manager, RCF, Chembur, Mumbai, Kuldip Narayan, the then General Manager, RCF, Chembur, Mumbai and Shri Pradip Ramrakhiani, Partner of M/s. Pradip & Co., Mumbai and Prop. of M/s. Raja Chemical Corporation, Mumbai

cheated the Rashtriya Chemical & Fertilizers Ltd., Chembur, Mumbai, by providing unauthorized supply of Sodium Nitrate and Sodium Nitrite to the said Shri Pradip Ramrakhiani on clean credit basis contrary to the policy of the RCF of "Pay Cash - Carry Basis". Thus, causing wrongful loss to the R.C.F. Ltd., Chembur, Mumbai, and corresponding gain to the said Shri Pradip Ramrakhiani.

That Sodium Nitrate (NaNO3) and Sodium Nitrite (NaNO2) are the by products of R.C.F. Ltd., and these by products are sold by the RCF Ltd., Mumbai to various firms/companies on cash or Bank/Collateral basis. These by-products are used by glass industries, fire-work manufacturers, in explosives, fertilizers and in pharmaceutical items.

That the said Shri Pradip Ramrakhiani, Partner of M/s. Raja Chemical Corpn. and Prop. of M/s. Pradip & Co., Mumbai is dealing in the aforesaid chemicals items since 1985 and initially he was purchasing the aforesaid chemical material from the R.C.F. Ltd., Chembur, Mumbai on cash payment and from 1986 he was purchasing the said material from the RCF Ltd. Mumbai on the credit basis against the bank guarantee.

That in pursuance of the letter dated 7.11.1998 of the RCF Ltd., Chembur, Mumbai, addressed to M/s. Raja Chemical Corporation asking them to enter into a long term agreement for sale of Sodium Nitrate the said Shri Pradip Ramrakhiani on 26.11.1985 asked the RCF Ltd., Chembur, Mumbai to give him clean credit facility to the tune of Rs.20 lakhs approximately and promised the RCF Ltd., Mumbai to lift 100 MTs of the Sodium Nitrate every month and that the said Shri Pradip Ramrakhiani further expressed that it was not possible to take the aforesaid chemical material on

cash and carry basis and he desired to lift the said chemical material on credit of 60 days by furnishing bank guarantee of Rs. 5 lakhs.

That in pursuance of the note dated 5.12.1989 put up by Shri Sudhakar Ghildyal, Dy. Marketing Manager, RCF Ltd., Chembur, Mumbai the said Shri S.M. Dhingra approved and recommended the aforesaid facility as requested by the said Shri Pradip Ramrakhiani mentioning that there will be a change from the company's conventional policy as such approval of the Board was required after the trial period given to the party was successful and satisfactory.

That the said Shri Kuldip Narayan recommended and approved the aforesaid facility to the said Shri Pradip Ramrakhiani on trial basis till 31.3.1989.

That the said Shri R. Venkatesan approved the aforesaid recommendations of the said Shri Kuldip Narayan saying, "OK let us see as a trial to increase the sale and then decide on permanent basis".

That in pursuance of the note put up by Shri R. Sen, Dy. Marketing Manager, RCF Ltd., Chembur, Mumbai on 31.3.1989, the said Shri R.K. Dargar approved and recommended to continue the aforesaid facility to the said Shri Pradip Ramrakhiani for a further period of three months knowing fully well that there were outstanding dues of Rs.17.70 lakhs against the said Shri Pradip Ramrakhiani.

That the said Shri Kuldip Narayan approved and recommended the aforesaid facility to the said Shri Pradip Ramrakhiani for a further period of three months with effect from 1.4.1989.

That the said Shri R. Venkatesan approved

the aforesaid recommendations of the said S/Shri R.K. Dargar and Kuldip Narayan for extending the aforesaid facility to the said Shri Pradip Ramrakhiani for a further period of 3 months till July 1989, without obtaining the approval of the Board.

That in pursuance of the note put up by Shri A.T. Muley, Dy. Marketing Manager, RCF Ltd., Chembur, Mumbai, the said Shri R.K. Dargar approved and recommended further credit facility to the said Shri Pradip Ramrakhiani falsely mentioning that the party's performance had improved and that the stock of the aforesaid chemical material was at zero level.

That the said S/Shri Kuldip Narayan and R. Venkatesan, approved the recommendations of the said Shri R.K. Dargar as aforesaid and okayed the said proposal enhancing the credit facility to the said Shri Pradip Ramrakhiani till 31.3.1990 inspite of the fact that there were outstanding dues to the tune of Rs.22 lakhs against the said Shri Pradip Ramrakhiani.

That the said Shri L.S.Bapna on 30.12.1987, put up a note saying the ex-factory price of the Sodium Nitrate was Rs.6,050/- and the competitors, M/s. Deepak Nitrite were selling the said product at the rate of Rs.5600 per ton and offering discount of 2.5% and that in order to compete with M/s. Deepak Nitrite it was essential to give 60 days interest free credit for Sodium Nitrate sold. It is further alleged that the said Shri L.S. Bapna recommended discount of Rs.176/- per ton and that the said Shri R. Venkatesan gave his approval in this regard on 31.12.1987 and a circular dated 1.1.1988 was issued to the effect that the material NaNO3 can be sold on 60 days credit basis against collaterals or a cash discount of Rs.160/- per ton. That the rates of M/s.

> Deepak Nitrite during the said period did not fluctuate. It is alleged that the aforesaid note of the said Shri L.S. Bapna recommending reduction of price of Sodium Nitrate by RCF Ltd. Chembur was false and as a result of this price reduction, the R.C.F. Ltd., Chembur, Mumbai, suffered a loss of Rs.1,12,200/-.
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> That in pursuance of the said aforesaid criminal conspiracy a wrongful loss of Rs.50,37,503.15 was caused to the RCF Ltd., Chembur, Mumbai and corresponding gain to the said Shri Pradip Ramrakhiani, in the aforesaid manner.
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> That the aforesaid acts on the part of S/Shri R. Venkatesan, Roop Kishore Dargar, L.S. Bapna, Kuldip Narayan, Pradip Ramrakhiani, Partner of M/s. Pradip & Company and Proprietor of M/s. Raja Chemicals Corporation, Mumbai constitute offences punishable under sections 120-B and 420 IPC and sec. 13(2) r/w 13(1)(d) of P.C. Act, 1988.
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> That the aforesaid acts on the part of Shri Surendra Mohan Dhingra constitute offences punishable under section 120-B and 420 IPC.
>
> It is prayed that aforesaid accused persons may kindly be tried according to Law for the aforesaid offences." (emphasis supplied)

. Insofar as the involvement of the Petitioner in the alleged crime is concerned, it is alleged that he recorded his approval on the Note prepared by Shri R.Sen, the Deputy Marketing Manager and recommended to continue the facility to private

party Shri Pradip Ramrakhiani for further period of three months, though there were outstanding dues of Rs.17.70 lakhs against that party. It is also alleged that the Petitioner approved the Note prepared by Shri A.T. Muley, Deputy Marketing Manager and recommended further credit facility to the same private party Shri Pradip Ramrakhiani falsely mentioning that the party's performance had improved and that the stock of the chemical material was at zero level. In support of this allegation, the prosecution is relying on several documents, including Circular issued by the General Manager (I) dated 25th October 1988 calling upon the concerned officials to ensure that the outstanding amounts with the parties are recovered/adjusted before delivering any more supplies to such parties. Reliance is also placed on letter of Shri S.M.Dhingra, Finance Manager (I), addressed to the Petitioner dated 28th February 1989, asking the Petitioner to refer the matter to the private party (M/s.Raja Chemical Corporation) for immediate recovery of the amount over and above the Bank guarantee and clean credit, as the outstanding amount of the said party as on 31st

December 1988 was Rs.20.51 lakhs in respect of supplies of Sodium Nitrate and Sodium Nitrite. Reliance is also placed on letter sent by the private party to the Petitioner dated 16th March 1989 requesting to reserve for them 35 tons of Sodium Nitrite (NaNO2) and 20 tons of Sodium Nitrate (NaNO3), on which letter an endorsement is made by the Petitioner to accede to that request. Reliance is also placed on the Note which has been initialled by the Petitioner on 12th October 1989 submitted by Shri A.T Muley dated 11th October 1989 on the subject of Sodium Nitrite. According to the prosecution, the remark regarding surplus fund available with RCF as noted by the Petitioner on this Note was misleading. Besides several documentary evidence, which have been made part of the charge sheet, the prosecution is also relying on the statement of Mr. K.S. Gopal Krishnan, Senior General Manager, as well as statement of Sudhakar Jagannath Kunjarkar, Deputy Marketing Manager, to indicate complicity of the Petitioner in the alleged offence. It is not necessary to multiply the other materials, which have been placed on record along with the charge sheet.

3. The Petitioner, however, filed application before the Special Judge for C.B.I., Greater Mumbai, where the criminal case is pending for trial, for discharge. The first contention raised on behalf of the Petitioner is that the Court cannot take cognisance as against the Petitioner for want of sanction, much less valid sanction. It was stated that Charge sheet was filed against the Petitioner on 30th September 1998, on which date, however, the Petitioner continued to be in the employment of RCF, for which reason the Sanction to prosecute the Petitioner was pre-requisite to take cognisance of the alleged offence against the Petitioner. According to the Petitioner, the material produced by the prosecution in support of the allegation, even if accepted as it is, will not indicate the complicity of the Petitioner in the commission of the crime. Besides, no offence is made out as against the Petitioner, for which the Petitioner needs to be tried. The Petitioner also relied on documents to support his claim that the Petitioner has been falsely implicated inasmuch as the Petitioner had merely given effect to the

prevailing policy/scheme of the RCF and had not deviated in any manner. It is his case that, in fact, the Board of Directors had occasion to consider the entire matter and at least on three occasions, they declined to grant sanction to prosecute the Petitioner, on the finding that it was the practice to offer credit to the parties, which was in vogue. The Board of RCF was of the opinion that the Petitioner had facilitated recovery of outstanding amount substantially. Moreover, the Note of the Chairman-cum-Managing Director, as well as the opinion of the Board, would clearly indicate that the decisions taken by the Petitioner were in the realm of commercial decisions in the best interest of the Company at the relevant time. Relying on the said opinion, it is the case of the Petitioner that the prosecution has not made out even a case of suspicion, much less grave suspicion against the Petitioner, so as to warrant framing of charge and to try the Petitioner for the alleged offence. It was also argued that although other officers were also involved along with the Petitioner in the decision making process and offering facility to the private

party, however the Petitioner was singled out and being persecuted. It is the case of the Petitioner that as officials superior to the petitioner and the members of the board of directors, who were supporting the claim of the petitioner, were not arraigned as accused, the prosecution theory of conspiracy ought to fail. It is the case of the petitioner that if the act of the petitioner was one which was a commercial decision taken at the relevant time in the best interest of the company and which decision has been accepted even by the board of directors of RCF, there can be no question of the petitioner being party to criminal conspiracy. It is the case of the petitioner that the petitioner has not concealed any relevant fact while approving the proposal to offer facility to the private party and the decision to do so was a conscious one with knowledge about the outstanding amounts in respect of the supplies already made at the instance of that party. According to the petitioner, therefore, there was no tangible material to proceed against the petitioner in respect of the alleged offence.

4. The Special Judge, however, negatived the contention regarding sanction raised on behalf of the Petitioner by observing that the date on which the charge-sheet came to be filed, i.e. 30th September, 1998, the Petitioner had already retired from service much before that date on 31st July, 1998. In that view of the matter sanction was not necessary. In so far as the merit is concerned the trial Judge relied upon the materials produced by the prosecution along with the charge-sheet including the statements of A.S.Gopalkrishnan, Biman Chakravarty, Sudhakar Jagannath Kungarkar, Vasudeo Kishor Bagul, Ms. Pravina Naraji Ruparel, Mukundral Dwarkadas Gandhi, Jayantilal Kantilal Shah and Ismailbhai Kapadia. The lower Court was of the view that there was sufficient material to proceed against the Petitioner by framing charge in respect of the alleged offence. The above decision of the Special Judge is subject matter of challenge in the present Writ Petition.

5. After hearing Counsel for the parties and considering the relevant materials on the record, in my opinion, this Petition does not merit any

interference. I shall first deal with the contention regarding absence of sanction order to proceed against the Petitioner in respect of the alleged offence. According to the Petitioner, the date on which charge-sheet came to be filed on 30th September 1998, he was in service at the relevant time. This contention is based on the letter at page 122 dated 8th December 2003 issued by the Company Secretary of the Company addressed to the Petitioner, which spells out the policy of the Company that during the period from May 1998 to 24th September 1998, all the employees who attained the age of 58 years, were continued with the understanding that their continuation beyond 58 years will be subject to review for satisfactory performance and physical fitness. This letter further mentions that the Board has reviewed the Petitioner's case in its meeting held on 30th October 1998, however, in view of C.B.I. having filed a charge-sheet against the Petitioner, it was decided not to enhance his retirement age to 60 years. It is then mentioned in this letter that the Petitioner was advised on 30th October 1998, not to attend the Office from 31st October 1998.

Relying on the contents of this letter, which according to the Petitioner, has not been disputed by the prosecution, it clearly appears that the Petitioner continued to be in service at least till 31st October 1998. In other words, when the charge-sheet was filed on 30th September 1998, the Petitioner was very much in service. This position is, however, countered by the Respondents by placing reliance on the letter issued by the Company (R.C.F.) dated 19th August 1998 to the prosecuting agency C.B.I., informing that the Petitioner retired on 31st July 1998. In addition, reliance is also placed on the letter issued by the Company (R.C.F.) addressed to the investigating agency C.B.I. dated 3rd March 1999, which re-iterates the position that the Petitioner was not re-employed by the Company on attaining the age of superannuation. Relying on these documents, it is contended that it can be safely assumed that the Petitioner retired from service on 31st July 1998. Accordingly, the charge-sheet having been filed on 30th September 1998, the question of obtaining sanction from the appointing authority to prosecute the Petitioner in respect of the alleged offence

did not arise.

6. There is substance in the argument canvassed on behalf of the prosecution. The document which is part of the charge-sheet, does support the stand of the prosecution, as can be seen that the Petitioner retired from service on 31st July 1998. Insofar as the letter relied upon by the Petitioner is concerned, that is a matter, which will have to be decided at the trial. In other words, in my opinion, the question of sanction in the fact situation of the present case is a mixed question of fact and law, which can be resolved only after evidence is laid by the parties on that issue. Viewed in this perspective, the Petitioner cannot succeed on the argument that it was not open to the Trial Court to take cognizance of the alleged offence as against the Petitioner, for want of sanction. To that extent, the view of the lower Court will have to be upheld, making it clear that the issue will have to be considered threadbare, after considering the evidence led by the respective parties in support of their claim at the trial.

7. Insofar as merits are concerned, my attention has been invited by the Counsel for the Petitioner to several decisions as to the scope of considering the prayer for discharge in the context of purport of Section 227 of the Code of Criminal Procedure. Reliance has been placed on the decision of the Apex Court in the case of **Union of India vs. Prafulla Kumar Samal & Anr. reported in (1979) 3 SCC 4.** Reliance is then placed on the decision in the cases of **Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia & Anr. reported in (1989) 1 SCC 715, Satish Mehra vs. Delhi Administration & Anr. reported in 1996 SCC (Cri.) 1104** and lastly, on the decision in the case of **Dilawar Balu Kurane vs. State of Maharashtra reported in (2002) 2 SCC 135.**

8. Relying on the above decisions, it was contended that the Judge, while considering the question of framing the charges under the said Section, has undoubted power to sift the evidence for the purpose of finding out whether or not prima facie case against the accused has been made out

and to ascertain whether it is a case of grave suspicion against the accused, which has not been properly explained. It was contended that the Judge cannot act merely as a post office or a mouthpiece for the prosecution, but has to consider the broad probabilities of the case and the documents to be produced before the Court. It was submitted that the lower Court has not even adverted to the materials which have been relied upon by the Petitioner, which it was obliged to consider.

9. Indeed, there can be no quarrel with the settled legal position about the duty of the Trial Judge to sift and weigh the evidence which is only for the limited purpose of finding out whether or not a prima facie case against the accused has been made out which discloses grave suspicion against the accused, which has not been properly explained. In the present case, the prosecution has relied on the documents which reveal that clear instructions were given to all the Officials including the Petitioner to ensure that outstanding amounts are recovered/adjusted from the parties before

delivering any more supply to such party. Inspite of such clear instructions, to the knowledge of the Petitioner, coupled with the fact that the private party was in arrears to the tune of Rs.20.51 lakhs as on 31st December 1988, which fact was informed to the Petitioner by the Finance Manager vide letter dated 28th February 1989, the Petitioner approved the proposal to extend facility to the private party (M/s.Raja Chemicals Corporation). Besides, the material on record, prima facie, indicates that the Petitioner had made misleading noting on 12th October 1989 on the note put up by Mr.A.T.Muley dated 11th October 1989 on the subject of sodium nitrite. The Petitioner has noted that in fact R.C.F. is having surplus funds wherefrom nominal interest has come, which fact, according to the prosecution, was misleading and decisive to extend facility, giving advantage to the private party, without giving public interest. Besides the documentary evidence on record, the prosecution is also relying on the statements, amongst others, of A.S.Gopalkrishnan, Senior General Manager, Sudhakar Jagannath Kungarkar, Dy.Marketing Manager and other Officials of the R.C.F. to indicate the complicity

of the Petitioner in the commission of the alleged offence. In other words, prima facie, there is material on record which not only discloses suspicion about the involvement of the Petitioner in the alleged offence, but grave suspicion.

10. To get over this position, Petitioner is relying on the minutes of the Board meeting to indicate that even the Board of Directors of the R.C.F. was of the opinion that the decision taken by the Petitioner at the relevant time was consistent with the practice in vogue and in any case, was a commercial decision taken at the relevant time in the best interest of the Company. Besides, the Board has also expressed satisfaction about the efforts made by the Petitioner for substantially bringing down the outstanding amount. Relying on this material, in particular, the decision of the Board of Directors, not to accord sanction against the Petitioner in respect of the alleged offence, taken at least on three different occasions, it was contended that the Petitioner has offered proper explanation, which can be the basis for the Trial Court to intervene in favour of the

Petitioner by discharging him.

11. The argument seems to be attractive, but in my opinion, is devoid of substance. Indeed, the Petitioner is justified in making grievance that this material has not been adverted to by the Trial Court at all. Even so, as the matter has been extensively argued before this Court and with the assistance of Counsel appearing for the parties, I have gone through the relevant material on record, in my opinion, the documents pressed into service on behalf of the Petitioner will be of no avail. This is so because the offence in question has allegedly taken place in 1989. The Petitioner is relying on a Board Resolution in the meeting held in November 1997. The deliberations in the meeting were in the context whether to accord sanction in favour of the Petitioner. In the process, it has been noted that the Petitioner had followed the practice which was in vogue at the relevant time. Those documents are not part of the charge-sheet. Whereas, the documents which are part of the charge-sheet including the statements of relevant witnesses would indicate the contrary position.

That will be a matter for trial. It is not open at this stage to make roving enquiry into the pros and cons of the matter and to go into the evidence as if the Court is called upon to conduct the trial. In other words, these documents, by itself, cannot be the basis to take the view that the Petitioner has properly explained the grave suspicion about his involvement in the alleged offence, which arises on the basis of the material produced by the prosecution. The case on hand is not one of a kind where it is possible to take the view that it is fairly certain that there is no prospect of the case ending in conviction.

12. Counsel for the Petitioner had placed reliance on the decision of the Apex Court in the case of **M.Narayanan Nambiar vs. State of Kerala reported in A.I.R. 1963 SC 1116,** wherein, it has been held that the principles of natural justice require that no Court shall give a finding whether on fact or law and particularly on facts, without giving an opportunity to the contesting parties. There can be no dispute with this proposition. In that case, the Court relied on the documents filed

by the prosecution at the trial without giving opportunity to the accused to file objections or to contest its reliability. The Court, therefore, held that principles of natural justice were violated in the fact situation of that case. However, in the present case, we are at the stage of framing of charge. The prosecution has furnished documents along with the charge-sheet, on which, it intends to rely. As mentioned earlier, the lower Court has not adverted to the documents which the Petitioner had pressed into service in support of his claim for discharge. I have already dealt with that aspect of the matter and in my view, that by itself, cannot be the basis to set-aside the final order passed by the lower Court in rejecting the discharge application of the Petitioner in the fact situation of the present case. Counsel for the Respondents had rightly placed reliance on the decision of the Apex Court in the case of **Central Bureau of Investigation vs. R.S.Pai & Anr. reported in (2002) 5 SCC 82** to contend that it is always open to the investigating agency to produce additional evidence gathered during investigation even after submission of

charge-sheet. The Apex Court had occasion to construe expression "shall" occurring in Section 173 of the Code and has taken the view that the same is directory and not mandatory for requiring the Police Officer to forward "all documents" to the Magistrate. In other words, it is always open to the prosecution to file further police report and bring on record additional material to proceed against the accused.

13. It was then contended on behalf of the Petitioner that the Petitioner has been arraigned as accused on the charge of criminal conspiracy. It was argued that other Officials, who were also involved in the decision making process have not been named as accused along with the Petitioner. Besides, the decision taken by the Petitioner was one on account of commercial expediency. In such a case, the charge of criminal conspiracy is untenable. The fact that other accused have not been named, by itself, cannot be the basis to discharge the Petitioner. It is well established that during the course of trial, if the Trial Judge is satisfied about the involvement of some other

person than the named accused, such person can also be arraigned as accused in view of the plenitude of power under Section 319 of the Code of Criminal Procedure. Besides, the argument that the offending decisions taken by the Petitioner were because of commercial expediency, is a matter which will have to be decided at the trial. For the time being, suffice it to observe that the material produced by the prosecution does indicate the complicity of the Petitioner in the commission of the alleged offence and which is a good reason to sustain the conclusion reached by the lower Court in rejecting the application for discharge preferred by the Petitioner.

14. Counsel for the Petitioner vehemently argued that the trial Judge has committed manifest error inasmuch as he has opined that the Petitioner shared booty in the crime, which is not even remotely suggested by the prosecution in the charge-sheet as filed. It was argued that since there is no material to suggest that the Petitioner has shared the booty or accepted illegal gratification, the charge under Section 13(2) read

with Section 13(1)(d) ought to fail. There is no substance in this argument. Indeed, the Petitioner may be justified in contending that there is no specific allegation against the Petitioner of having shared the booty from the private party. That reason alone cannot be the basis to overturn the conclusion reached by the Trial Court of dismissing the discharge application, which decision can, however, be sustained on other counts. The argument that there is no allegation spelling out illegal gratification for which reason, the charge under Section 13(2) read with 13(1)(d) must necessarily fail, clearly overlooks the purport of Section 13(1)(d) of the Act. It covers different situations. It is not necessary that the Petitioner, who was a public servant at the relevant time is benefited by illegal gratification. The offence is also made out when a public servant obtains for any person any valuable thing or pecuniary advantage without any public interest. It is also an offence if the public servant by abusing his position obtains for any other person any valuable thing or pecuniary advantage. Viewed in this perspective, there is no

substance in the submission as canvassed.

15. It was then argued that the learned Judge has committed manifest error, inasmuch as he has relied on the circumstances that the Petitioner blamed the others, being guilty of the offence charged. As mentioned earlier, even if the said grievance is to be accepted, that does not require overturning of the conclusion reached by the lower Court in dismissing the application for discharge of the Petitioner for the reasons already indicated earlier.

16. It was then contended that on fair reading of the Minutes of the Board of Directors of R.C.F., it can be discerned that the Petitioner cannot be held guilty for causing any wrongful loss to R.C.F. or in causing any corresponding wrongful gain to himself or that he was certainly not acting in any conspiracy with other accused. Once again, this submission will have to be stated to be rejected, as I have taken the view that the material on record produced by the prosecution does indicate grave suspicion about the complicity of the

Petitioner in the alleged offence. Whether the Petitioner can be held guilty or not, is a matter for trial.

17. It was argued that the material produced by the Petitioner would indicate that the credit facility was extended not only to the private party (M/s.Raja Chemicals Corporation) but also to others and in fact, they had honoured their commitment after the facility was given till 1992. Even this argument does not commend to me. The fact that similar facility was extended to other parties as well, does not mean that no offence was committed by extending such facility to M/s.Raja Chemicals Corporation. Viewed in this perspective, at this stage of the proceedings, it is not necessary to influence the decision with the fact that similar credit facility was extended to others as well. At this stage, Court is required to take overall view of the evidence on record to ascertain whether it discloses grave suspicion against the accused named in the alleged offence and which has remained unexplained.

18. It was then argued that the fact that the Board of Directors rejected request for sanction on three different occasions, was a relevant factor and the prosecution has not acted fairly in concealing that material from the Trial Court, which, however, was brought on record only by the Petitioner. Even this submission is of no avail and cannot be the basis to straightway discharge the Petitioner, in view of the material on record to indicate his complicity in the commission of the alleged offence, which was sufficient to proceed against him for the alleged offence.

19. In my opinion, therefore, this Petition should fail and instead, the order passed by the lower Court rejecting the prayer of the Petitioner for discharge, will have to be upheld.

20. Hence, dismissed.

21. It is made clear that the Trial Court shall decide the case on the basis of evidence, as will be adduced at the trial on its own merits in accordance with law, uninfluenced by any of the

observations in this Judgment.

A.M.KHANWILKAR, J.